

EXHIBIT 7

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -
JAMES BENBOW,

Plaintiff,

-against- Civ. No.: 17-CV-6457 (EK) (LB)

CITY OF NEW YORK; POLICE OFFICER BRIAN W.
FEELY; POLICE OFFICER MATTHEW J. ROSIELLO;
POLICE OFFICER KENNETH L. ANDERSON; SERGEANT
WILLIAM A. DAIB; POLICE OFFICER SHANIEL J.
MITCHELL; and POLICE OFFICER STEPHEN J.
MINUCCI,

Defendants.

- - - - -
VIDEOCONFERENCE VIA ZOOM
Conducted by:
LEX REPORTING SERVICE, INC.
160 Broadway
New York, New York

October 14, 2020
2:02 p.m.

DEPOSITION of CAPTAIN WILLIAM A. DIAB,

named herein as **SERGEANT WILLIAM A. DAIB**, a
Defendant in the above-entitled action, held
remotely via Zoom videoconference, pursuant to
Order, taken before Tania C. Pedrosa, a
shorthand reporter and Notary Public within and
for the State of New York.

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W. A. Diab

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Q And when you are qualifying for
your weapon, you're taught to shoot at center
mass, correct?

5

A Say that again.

6

Q When you qualify for your weapon,
you're taught to shoot at center mass,
correct?

9

A Yes.

10

Q Okay. And if someone is facing
you, center mass is essentially from the neck
down to the waistline, correct?

13

A Yes.

14

Q And if their back is to you, the
center mass would be from the top of -- from
the bottom of the neck down to the waistline,
correct?

18

A Yes.

19

Q Okay. And that's what you were
taught to aim for when you're shooting to
qualify for your weapon, correct?

22

A Yes.

23

Q Okay. Now, in terms of deadly
physical force, you're allowed to use deadly
physical force if someone is presenting

1 W. A. Diab 44

2 deadly physical force against you; is that
3 correct?

4 A Yes, or in imminent danger of
5 deadly physical force.

6 Q Okay. Are you taught to shoot
7 someone because they run away from the
8 police?

9 A NO.

10 MR. WEINER: Objection.

11 Q Would that be an unlawful use of
12 force?

13 MR. WEINER: Objection.

14 | Go ahead.

15 Q You can answer.

16 THE WITNESS: I can answer,
17 okay.

18 A I mean, there's more variables
19 that -- you know, if a guy is unarmed and
20 just running from the police and not posing
21 any threat to them, then, yes, that would be
22 unlawful. But if -- there -- there's other
23 variables.

24 Q Okay. Is running from the police
25 a crime?

1 W. A. Diab 45

2 A N○.

3 Q Okay. If someone has a gun, is
4 that in and of itself a reason to shoot them?

5 MR. WEINER: Objection.

6 Go ahead.

9 A No, it's not but --

10 Q Okay.

11 A -- like I said, there's other
12 variables.

Q Okay. But if some -- okay. Let me give you an example.

15 If someone is running with a gun
16 in their hand, the fact that they're running
17 with the gun, is that in and of itself a
18 reason to shoot them?

19 MR. WEINER: Objection.

20 Objection.

21 Q You can answer.

22 A If they're running away with a
23 gun?

24 | Q Yes.

25 A Like I said, there -- there's

1 W. A. Diab 47

2 if we want to talk about hypothetical -- I
3 mean, hypothetically, like, if he's just
4 running away and there's no one there and
5 there's no cops there, you know, no one in
6 imminent danger from getting fired at -- each
7 -- each situation is -- you know, is
8 different, you know.

9 Q So you started off your answer by
10 saying --

11 A Yeah, because --

Q -- hypothetically --

13 A You know what? As I'm trying to
14 answer it, I really can't because I would
15 have to be in that situation.

16 Q Okay. So --

17 A Just having have a gun -- just
18 having a gun, no. You shouldn't shoot
19 somebody just for having a gun. But, like I
20 said, I don't know what the officers see. I
21 don't know what -- you know, you're not
22 giving me a scenario -- you know what I mean?

23 Q Okay. We'll get into scenarios.
24 But just to get some clarity, just having or
25 running with a gun in and of itself is not a

1 W. A. Diab

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2 Q Okay. So I'll give you an
3 example.

4 If an officer sees another
5 officer using excessive force, they have an
6 obligation to stop that, correct?

7 A Yes, yes.

8 Q If an officer sees another
9 officer engaging in an unlawful arrest, they
10 have an obligation to stop that, correct?

11 A Unlawful, yes.

12 Q Okay. Throughout your career
13 have you ever seen an officer actually
14 intervene against another officer who was
15 either using excessive force or engaging in
16 an improper action?

17 A Yeah, yes.

18 Q Have you ever done that?

19 A Yes.

20 Q In what scenario?

21 A If -- it doesn't even have to be
22 excessive. You know what I mean? Like, if
23 someone -- say you're trying to cuff a guy.
24 From my vantage point, the guy may not resist
25 -- be violently resisting as to where he

1 W. A. Diab 61

2 Q Okay. And Officers Rosiello,
3 Feeley, and Anderson worked together in the
4 conditions unit, correct?

5 A Yes.

6 Q And they would go out and try to
7 deal with some of the conditions that you had
8 discussed, correct?

9 A Yes.

10 Q Following up on complaints from
11 the community, essentially patrol, correct?

12 A Yes.

13 Q Okay. Throughout the time that
14 you were supervising Officers Rosiello,
15 Anderson -- Rosiello, Anderson, and Feeley,
16 did anyone ever share or discuss with you
17 their CCRB histories?

18 A NO.

19 Q How about their Internal Affairs
20 histories?

21 A N○.

22 Q How about their lawsuit
23 histories?

24 A No.

25 Q Okay. So as their sergeant

1 W. A. Diab

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2 supervisor in 2015, these things were not
3 shared with you, correct?

4 MR. WEINER: Objection.

5 Go ahead.

6 A No, they weren't shared with me.

7 Q Okay. And you're -- you're the
8 direct line supervisor, correct?

9 A Yes.

10 Q And the police department is a
11 paramilitary organization, correct?

12 MR. WEINER: Objection.

13 A Yes.

14 MR. WEINER: Go ahead.

15 A Yes.

16 Q Is that a yes?

17 Okay. And you have ranks,
18 correct?

19 A Yes.

20 Q And every rank reports to the
21 rank above it essentially, correct?

22 A Yes.

23 Q Okay. And so as police officers,
24 they directly reported to you as their
25 sergeant, correct?

1 W. A. Diab 63

2 A Yes.

3 Q And you were responsible for
4 their supervision, correct?

5 A Yes.

6 Q Throughout the time that you've
7 been a ranking officer -- and what I mean by
8 that is a sergeant, lieutenant, captain,
9 maybe a deputy inspector next -- who knows?
10 -- inspector --

11 A Yeah. Fingers crossed, right.

12 Q Yeah. You got the white shirt
13 anyway.

14 A Yeah.

15 Q So throughout the time that
16 you've held -- you know, a sergeant,
17 lieutenant, and captain, has anyone ever
18 given you the CCRB, IA or lawsuit histories
19 for the people that you've supervised?

20 A No.

21 Q Has anyone ever told you that,
22 you know, the person that -- or the officers
23 that you're supervising, one or more should
24 have an eye kept on them because they've had,
25 you know, a few CCRB reports or IA history or

1 W. A. Diab

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2 lawsuits?

3 A Not -- not these guys, no.

4 Q Well, anyone under you throughout
5 the time that you --

6 A I mean, it can -- it can happen.

7 I think at -- when I was a patrol sergeant,
8 like, they said "Watch this guy. He's -- you
9 know, he's no good or whatever." You know,
10 like -- I don't -- I don't remember what
11 words were used. But with these guys, no,
12 not at all.

13 Q Okay. And where were you a
14 patrol sergeant?

15 A In the 77.

16 Q Okay. Was that before or after
17 this incident?

18 A That was before.

19 Q Okay. Generally speaking, is
20 that how it would work? It would be sort of
21 this informal thing where someone would be
22 like, "Hey, watch this guy" or --

23 A Yeah, if they have anything
24 that --

25 MR. WEINER: Objection to

1 W. A. Diab

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2 was taken.)

3 BY MR. ABOUSHI:

4 Q Captain Diab, does a person have
5 any obligation to speak to the police if they
6 don't want to?

A civilian you're saying?

8 Q Yeah.

9 A Yeah, they don't have to speak to
10 us.

11 Q And if they start speaking to
12 you, they could stop at any point in time,
13 correct?

14 A Yes.

15 Q And that's not a crime to refuse
16 to speak to you, correct?

17 A N○.

18 Q And we established that running
19 away is also not a crime, correct?

20 A Correct.

21 MR. WEINER: Objection.

22 Q If you go to someone's door and
23 you knock on their door and ask them to open
24 up the door, they don't have an obligation to
25 open up the door, correct?

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W. A. Diab

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Mitchell and then -- Mitchell was actually in
the office while I was there. So he
basically relays me -- to me what Cespedes is
saying and then I talked to Cespedes real
quick and he -- he verifies -- confirms that
the guy has a gun right there and he's drunk
and he's acting crazy.

9

Q Okay. In terms of this bouncer,
are you familiar with what his name was?

11

A Yeah. He was actually an
auxiliary officer in our precinct, Marshall.

13

Q Okay. And prior to this date,
had you interacted with him?

15

A I would see him around but I
never really spoke to him, no.

17

Q Okay. And after this incident,
did you see him or speak to him?

19

A Yeah. I would say hello, yeah.

20

Q Okay. Did at some point in time
his employment with the NYPD cease?

22

A Yeah. I think he got us in
trouble or something.

24

Q I'm sorry. I didn't hear that.

25

A Yeah. I think he got into some

1 W. A. Diab 82

2 trouble. I think he -- you know, I don't
3 think he's on the job anymore.

4 Q Okay. And what kind of trouble
5 did he get into?

6 A I don't know the particulars of
7 it. I know he's -- I think he got -- he
8 resigned or something.

9 Q Okay. Do you know if --

10 A I don't know the particulars of
11 it.

12 Q I'm sorry. Do you know if he was
13 ever criminally charged with anything?

14 A I heard some stuff but, like, I
15 don't really remember too much about it so I
16 can't really speak on it, you know.

Q Do you remember what you heard?

18 A I believe he was in a car
19 accident or something and he made -- he made
20 a bogus report, some -- something like that.

21 Q Did you ever discuss directly
22 with Mr. Marshall what was going on in the
23 location?

24 A T did not .

O Everything you were hearing was

1 W. A. Diab

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2 second or third-hand?

3 A Yes.

4 Q Did you do anything to verify
5 that information that was coming from -- that
6 was allegedly coming from Mr. Marshall?

7 MR. WEINER: Objection.

8 THE WITNESS: I can answer?

9 MR. WEINER: Yeah.

10 Q Yeah, you can answer, please.

11 A No, I didn't really verify it. I
12 mean, I -- if he's working security, I don't
13 -- you know, I think it's pretty verifiable
14 given that he wasn't --

15 Q I'm going to ask -- did he ever
16 give you a tip before?

17 A No.

18 Q So this was the first time that
19 he had provided some information like this?

20 A Yes.

21 Q Okay. And how far is this
22 establishment from your precinct, the 77?

23 A Give or take 10, 15 minutes.

24 Q Was this location in the confines
25 of your precinct?

1 W. A. Diab 98

Q Arrest them?

3 A I was going to stop them.

4 Q Okay. And so you jump out of the
5 car and your -- your gun is drawn, correct?

6 | A Yes .

7 Q What does Officer Minucci do?

8 A I don't know. My -- my focus was
9 on these two individuals.

10 Q Okay. And what -- what did
11 Officer Mitchell do?

12 A He stopped the car.

13 Q Okay. And did you jump out of
14 the car before or after the car came to a
15 stop?

16 A It came to a stop and I jumped
17 out of the car.

18 Q Okay. Did you tell the officers
19 in the car that you were about to do that?

22 Q Okay. And so you jump out of the
23 car and you approached these two individuals,
24 correct?

25 A Yes.

1 W. A. Diab 99

2 Q Okay. And you said you didn't
3 see what Officer Minucci was doing, correct?

4 A That's correct.

5 Q Okay. And you didn't see what
6 Officer Mitchell was doing; is that correct?

7 A That's correct.

8 Q Okay. Mr. Benbow at that point
9 turns in a 180 and runs in the opposite
10 direction, correct?

11 A Correct.

12 Q You're focused on Mr. Bradley
13 who's on the ground, correct?

14 A Correct.

15 Q Okay. You don't see what happens
16 after that; is that correct?

17 A That's correct.

18 Q Your attention is focused on
19 Mr. Bradley on the ground, correct?

20 A Yes.

21 Q And then you hear gunshots; is
22 that right?

23 A Yes.

24 Q At that point you didn't know who
25 was shooting, right?

1 W. A. Diab 102

2 guy -- to the location where I heard the --
3 the gunshots and --

4 Q Okay. Did you have your gun out
5 at that point?

6 A I think I was holstered at that
7 time.

8 Q Okay. And when you get to where
9 you heard the gunshots, what do you see?

10 A I see Mr. -- Mr. Benbow on the
11 ground. He's -- he's shot. And I see a
12 gun -- a silver gun in the street a couple of
13 feet away from him. And I see Rosiello and
14 Feeley are right over in that direction. And
15 then I --

16 Q Okay.

17 A -- I asked -- I could go on or
18 no?

19 MR. WEINER: You can go.

20 | Finish your answer.

21 A I asked what happened and they
22 said, "We shot. He pulled out a gun. We --
23 we -- we shot."

24 Q Okay. Did Mr. Benbow ever point
25 a gun at you?

1 W. A. Diab 103

2 A Not that I saw.

3 Q Did you see him point a gun at
4 anyone?

5 A No.

6 Q Back --

7 A As soon as I got there, he kind
8 of -- he dipped. He -- he -- he did a 180,
9 like you said.

10 Q And he ran away?

11 A Yeah.

12 Q Okay. He didn't try to confront
13 you in any way, correct?

14 A No.

15 Q Okay. Did you see anything in
16 Mr. Benbow's hand?

17 A I did not.

18 Q Okay. When you went to where
19 Mr. Benbow was, did you see any blood?

20 A I don't recall. I don't recall.

21 Q After you went to where
22 Mr. Benbow was and Officers Rosiello and
23 Feeley were, did you make a notification at
24 that point?

25 A After I found out, like, that guy

1 W. A. Diab 104

2 was shot and they -- there was a
3 police-involved shooting?

4 | Q Yes .

5 A Yeah. I put it over, set up a
6 crime scene, had put -- had put it over the
7 air, got that and got an ambulance because he
8 was hurt, obviously, and everyone came within
9 minutes.

An ambulance came within minutes?

11 A I said everyone came within
12 minutes.

Q Oh, okay. I'm sorry. Could you
see where Mr. Benbow was shot?

15 A I really don't remember.

16 Q Okay. After everyone came did
17 there come a point in time where you, Feeley,
18 and Rosiello had discussed what happened?

19 A At -- at the scene?

20 Q Yeah.

21 A Yeah. I got the story. I was
22 like, "What happened?"

23 Q Okay. Who was there when you had
24 gotten the story?

25 A I definitely remember Rosiello

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W. A. Diab

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A No. I -- I don't -- I just
can't --

4

Q Okay. That's fine.

5

A -- speak to it.

6

Q That's fine. Thank you.

7

Did you shoot at Mr. Benbow?

8

A I did not.

9

Q Why not?

10

A Because there was no reason for
me to at that moment. Like, I didn't see --
there was no threat for me to shoot him at
that moment when I --

14

Q At any moment -- at any moment
was there a threat or a reason for you to
shoot at Mr. Benbow?

17

MR. WEINER: Objection.

18

A Not from me at my vantage point.

19

Q So for you -- I'm not talking
about any other officer. Okay?

21

A Yeah.

22

Q That night did you have any
reason to shoot Mr. Benbow?

24

MR. WEINER: Objection.

25

A I did not.